

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEDRO CRUZ HERNANDEZ, F-11032,)	
)	
Plaintiff(s),)	No. C 11-3223 CRB (PR)
)	
vs.)	ORDER OF DISMISSAL
)	
F. GONZALEZ, et al.,)	(Docket #2)
)	
Defendant(s).)	
)	

Plaintiff, a prisoner at the California Correctional Institution in Tehachapi, has filed a pro se complaint under 42 U.S.C. § 1983 attacking the validity of his state criminal conviction and sentence. He also seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915 (docket # 2), which, based solely on his affidavit of poverty, is GRANTED.

Plaintiff's action must be dismissed without prejudice because it is well-established that any claim by a state prisoner that would necessarily imply the invalidity of his conviction or continuing confinement, as plaintiff's claim would here, must be brought in a habeas petition under 28 U.S.C. § 2254 after exhausting state judicial remedies. See Nelson v. Campbell, 541 U.S. 637, 642-44 (2004); see also Calderon v. Ashmus, 523 U.S. 740, 747 (1998) (claim by a prisoner attacking the fact or duration of his confinement must be brought under the habeas sections of Title 28 of the United States Code).

1 For the foregoing reasons, the complaint is DISMISSED without prejudice
2 to filing a habeas petition under § 2254 after exhausting state judicial remedies
3 or, since it appears that petitioner already has filed a habeas petition, seeking to
4 amend his pending habeas petition to add new claims after exhausting state
5 judicial remedies.

6 The clerk shall enter judgment in accordance with this order, terminate all
7 pending motions as moot, and close the file.

8 SO ORDERED.

9 DATED: July 15, 2011



CHARLES R. BREYER
United States District Judge